cable programming services. If the equipment is so used, the inquiry ends, and the equipment is subject to regulation as a cable programming service under section 623(c), rather than basic tier equipment under section 623(b).

B. Extending Cost-Based Regulation Of Equipment Only To Basic Service Tier Subscribers Facilitates A Competitive Market For Equipment And The Development Of New Equipment Technologies

The Act works to strike the appropriate balance between assuring affordable equipment rates and avoiding the costs to both cable operators and subscribers of over-regulating such rates. It strikes this balance by imposing cost-based regulations only on equipment furnished to basic service tier only subscribers and declining the invitation to foist such regulation on equipment used to receive cable programming services. This balance is an appropriate one because it promotes the dual goals of (1) affording the greatest number of people the opportunity to subscribe to the basic service tier[43] and promoting the development of new equipment technologies and a competitive market for converters and remotes.[44] Furthermore, the Act protects subscribers to cable programming services against unreasonable equipment charges by empowering the Commission to reduce rates if the cable programming service rates

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[43] 1992 Cable Act Sections 2(a)(17) and 2(a)(19).

[44] <u>See</u> Section 624(c)(2)(C)-(D).

together with the rates for the related equipment are found to be unreasonable.[45]

Development of new equipment technologies inevitably will be influenced by the Act's treatment of equipment regulation. If all equipment were subject to cost-based regulation, the incentive to invest risk capital in the research and development of new equipment technologies would be stifled. As Mr. Coblitz' attached discussion of cable technology establishes, this concern is not theoretical.

> The regulation of prices for customer equipment -- as of today principally converters and remotes -- is one area where the risk of unintended consequences is severe. Either a miscategorization of rate-regulated equipment or too severe a set of pricing constraints could have the effect of bringing the government into the design of systems architectures and the selection of new technologies.

Coblitz at 1.

The development of equipment to receive digitally compressed transmissions looms on the near-term horizon.[46] Subjecting this equipment to cost-based rate regulation would be a disincentive to its rapid and vigorous development, production and distribution.[47]

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[45] See Sections 623(c)(1) and 623(l)(2). See also, Section 623(c)(2)(D).

[46] Coblitz at 4-6.

[47] It would also be in direct contravention of the Congressionally expressed policies of:

> (1) promot[ing] the availability to the public of a diversity of views and information through cable television and other video distribution media;

(continued...)

There is a substantial danger here that, indirectly and unintentionally, the Commission could end up dictating issues of systems architecture and technology selection. It is a danger that the Commission should go to great lengths to avoid.

As a result of passage of the Act, there is in fact less reason to be concerned with the close regulation of equipment rates. Section 624A(c)(2)(C) directs the Commission to promulgate regulations which promote the commercial availability of converter boxes and remotes from both cable operators and independent retail vendors. And section 624A(c)(2)(D) requires cable operators that supply remotes to notify subscribers of the option of acquiring them from other vendors. These requirements are part of an important Congressional initiative mandating FCC efforts to foster greater technical compatibility among different types of subscriber video equipment. The development of common technical standards or interfaces inevitably will expose cable equipment to the fierce competition that characterizes the consumer electronics business. In a very practical sense, this will render concerns about either the scope or the severity of

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[47](...continued)

> (2) rely[ing] on the marketplace, to the maximum extent feasible, to achieve that availability; [and]
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> (3) ensur[ing] that cable operators continue to expand, where economically justified, their capacity and the programs offered over their cable systems.

1992 Cable Act Section 2(b)(1)-(3).

equipment regulation a matter more of transitory than enduring importance. Congress thus correctly recognized that the marketplace is the best arbiter of equipment rate levels. By imposing cost-based regulation only on equipment used by basic-service-tier-only subscribers, and by undertaking the obligations set out in section 624A, the Commission fosters the commercial availability of converter boxes and remotes from third party vendors.

As Mr. Coblitz' paper points out, there are important considerations that should be included in efforts to further "commercialize" the cable subscriber equipment marketplace. Not least among them are requirements to contain signal leakage and, especially, to avoid imposing unnecessary costs on cable system capacity expansion.

> [A]ny system, the design of which is predicated on high bandwidth and distributed intelligence, relies on the ability of the home equipment in the final delivery of products and services in a way that is user friendly, acceptable and at realistic levels of cost. More importantly, as technology continues its rapid change and improvement, obsolescence of the home equipment becomes a critical concern. Today, obsolescence is handled by the replacement of cable-related in-home equipment with equipment of new, more advanced capability. However, with digital compression and many enhanced new services, that cost could be very great. Further, since much of the intelligence of the new convertors can be transparent to the user, the opportunity exists to introduce new technologies into the home much more rapidly and in an integrated fashion.
>
> The good news is that technology is giving us an answer whereby at least some of the cost of the home device need not be replicated time after time. On the other hand, the need for such equipment to effectively interface with televisions, both today's and HDTV,

> personal computers and other devices yet to be determined adds enormously to the complexity.
>
> Given the extraordinary advantages associated with providing broadband, interconnected capabilities to the home and the natural course of the development of the cable television business in that direction in a relatively near time frame, flexibility in dealing with the "distributed intelligence" in the home will be of paramount importance.

Coblitz at 10-11 (footnote omitted).

These issues can have practical solutions, but the Commission must take considerable care to avoid unduly complicating the effort by its decisions with respect to equipment rate regulation.

C. Implementation Problems And Concerns

Regardless of how broadly the regulation of equipment on the basis of actual cost is deemed to sweep, there are very difficult practical problems inherent in the implementation.

Comcast -- and it believes the cable industry generally -- has not priced equipment on a wholly consistent basis from system to system. For example, the 155,000 customers in Comcast's Philadelphia system all are supplied with an converter and remote. There is no explicit charge for this equipment. Other systems, however, have explicit equipment charges. Additional outlets are priced explicitly in the Philadelphia system, but the price includes a converter and remote in addition to the other costs to the company in providing the additional outlet. The point here is that accidents of nomenclature have a significant effect upon the nominal prices associated with equipment. One of the many probable effects of the 1992 Act will be adjustments in equipment pricing practices, leading eventually to a relatively consistent pattern both by individual MSOs and across the cable industry. These adjustments, however, will take some time to accomplish. Until they occur, however, an attempt to regulate equipment prices rigorously is likely to be ineffectual at best and counterproductive at worst. The Commission is better advised to provide for some form of transitional regulation that enables the necessary adjustments to occur, to be followed to the extent necessary by a more permanent regulatory approach.

There is a second issue that makes cost-based regulation of equipment particularly difficult. Neither Comcast nor, it believes, the rest of the cable industry maintains accounting records that would permit recovery of the direct imbedded costs of individual categories of equipment. For example, Comcast uses more that 20 different types of converters purchased from eight vendors. It also uses more than 20 types of remote control devices purchased from 10 vendors. The average Comcast system will have three or more different types of converters that were purchased at varying prices. Comcast has not had any occasion to maintain the type of cost allocation system or detailed cost accounting records that are common with public utilities. If the FCC decides that the statute requires close, cost-based regulation of relatively refined equipment categories, substantial expense and time will be required to devise and implement the detailed accounting conventions necessary to capture the requisite data.

Thus, Comcast recommends that the Commission permit a transition, prior to implementation of comprehensive, cost-based rate regulation of equipment. In addition to the problems of implementation described above, as the attached technology monograph by Mark Coblitz indicates, too rigorous an approach to equipment rate regulation carries with it a decided risk that the Commission will indirectly insert itself into the business of systems architecture and technology selection. The imposition of cost-based regulation invariably affects the incentives of regulated firms. The consequences can be severe, especially in times of rapidly changing technological opportunities and consumer demands. A great deal of care needs to be taken here to avoid unintended, welfare-reducing consequences.

V. LEASED COMMERCIAL ACCESS

The amendments to section 612 of the Communications Act contained in the 1992 Cable Act are perhaps the most difficult to discern and implement with any level of confidence that the statutory goals can or will be met. There is one very simple explanation for this: the section's policies and objectives have moved quite far in the direction of internal inconsistency and conflict. The overarching purposes of the section are set forth in section 612(a): "to promote competition in the delivery of diverse sources of video programming and to assure that the widest possible diversity of information sources are made available to the public...." To achieve these purposes, the Commission is instructed to establish rules for determining the "maximum reasonable rates that a cable operator may establish" for commercial leased access. Section 612(c)(4). The price and other terms and conditions for leased access established by the operator must be "at least sufficient to assure that such use will not adversely affect the operation, financial condition, or market development of the cable system." Section 612(c)(1).

The inherent problems of leased access as a compelled act were expressly recognized by the House Report. It explicitly discussed the FCC's Cable Report, and its findings that demand for leased access has been substantially less than that which was anticipated in 1984. House Report at 39. The House Committee also noted that some leased access is occurring nevertheless. What prompted the Committee to amend the section was its perception that "leased access has not been an effective mechanism for securing access for programmers to the cable infrastructure or to cable subscribers." More specifically, the Report described the concern that "cable operators have the financial incentives to refuse leased access channel capacity to programmers whose services may compete with services already carried on the system, especially when the cable operator has a financial interest in the programming services it carries." House Report at 39. Thus, the House Committee concluded that "leased access capacity should be used to promote competition by independent programmers to the services selected by the cable operator." Id. at 40.

Congress' concerns were thus clearly articulated. So too was its proposed remedy: to involve the FCC in setting rules for cable operators to establish maximum reasonable rates. This approach is markedly different than the regulatory approach for basic service. The language of section 612 calls only for a maximum rate, and one that the cable operator will establish pursuant to Commission rules. Individual negotiation and departure from this maximum rate was expressly envisioned: "The operator and the programmer can bargain for a lower rate." S. Rep. No. 92, 102d Cong., 1st Sess. 32 (1991) (emphasis added) ("Senate Report"). Therefore, Congress' goal was to provide some parameters to add more certainty to facilitate the process, not to derive actual rates for leased access.

A. Maximum Rates

The Notice proposes to fall back to either cost-of-service regulation, cost-based benchmarks, or market rates of effective competition systems to implement this section. In making these various proposals, the Notice appears to reflect an intent to derive a rate for leased access. As discussed, this type of approach far exceeds the scheme intended by Congress. Individual negotiations remain the controlling mechanism: programmers are given at least two additional pieces of leverage by the statute. First, there is a ceiling price at which the operator is no longer unqualifiedly "free to walk" and further, an expedited resolution of disputes has been put into place to resolve controversies between operator and programmer. The maximum rate needs to meet two objectives: it must be sufficiently low so that it permits commercial opportunities, and further, it must be sufficiently high so that it does not provide an incentive to existing programmers to "migrate" to leased access and thereby threaten the economic condition of the cable operator. This problem is recognized in the Notice. As the Commission observes:

> [I]f rates for leased access are low enough, unaffiliated programmers may seek to move their program offerings from other channels to those set aside for leased access, thereby diminishing the number of channels available for leased access without adding to the diversity of the programming offered on the system.

The problem of migration poses an additional problem with far more profound consequences, however. The only maximum price which will satisfy both objectives is that which is equal to the highest price implicitly paid by any programmer currently on the system. Any ceiling which is lower will prompt migration in contravention of the statute.[48]

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[48] The Commission cannot realistically preclude migration by simple fiat. If the monetary incentives created by the new statutory schema are wrong, a programmer will find some way to avoid any direct inhibition on migration, e.g., through name changes, modest format changes, etc. The Commission would then be in the position of having to assess whether a second generation channel was so much like the first generation that it was a migrated channel for §612 purposes -- a quagmire that certainly should not be knowingly entered.

B. Not-For-Profit Programmers

The Notice proposes to set different maximum rates for commercial vis-a-vis non-profit lessees. Notice at ¶ 153 & n. 197. Comcast does not perceive any particular need for this. First, there is simply no evidence that substantial amounts of nonprofit programming would be available but for leased access problems. Second, the Act plainly contemplates that the local franchising authority, through the franchising process, will bargain for the public access channels desired locally. Any subsidies of public, educational, or governmental access which necessarily increase cable rates to all subscribers are appropriately left in the province of local authorities. It appears that the suggestion for a special not-for-profit price may be the product of a misreading of the legislative history of the 1984 Act. It is clear that in passing the 1984 Act Congress did not seek to impose strict non-discrimination requirements on channel leases out of recognition that this would impair program diversity. There is a significant difference, however, between permitting a cable operator to charge different lessees different prices and requiring it to do so. It is not at all apparent that Congress invited this different result in passing the 1992 Act. In summary, Comcast believes that the general leased access mechanism -- negotiations between operator and channel lessee -- will be sufficient to meet the needs of non-profits.

C. Expedited Procedures And Resolution

The Notice understandably seeks reconciliation of the new language to section 612(c), adding additional regulatory oversight to cable operators' leased access prices on the one hand, and the presumption of reasonableness and good faith contained in section 612(f). The legislative history gives virtually no guidance on this point. To give effect to both provisions, the Commission must continue to apply the presumption for any rate below the maximum as established. The Notice further questions whether "emergency" procedures such as oral rulings should be established. It is frankly difficult to conceive of what situations involving leased access programming would require "emergency treatment." We can think of none. Controversies will arise over time, as, for example, when negotiations which have continued over some period fail to establish mutually satisfactory arrangements. Under such typical conditions, however, an expeditious pleading cycle (30 days for opposition; 15 for reply), should be more than adequate. The Commission's obligations under the Administrative Procedure Act should not be sacrificed in this cause, however. All rulings should be in writing.

V. PROVISIONS APPLICABLE TO CABLE SERVICES GENERALLY

A. Subscriber Line Itemization

Section 622(c) authorizes cable operators to itemize on subscriber bills certain readily identifiable costs which are wholly outside the scope of cable operators' control and, as such, are appropriate for special treatment in the statute:

> "(c) Each cable operator may identify, consistent with the regulations prescribed by the Commission pursuant to section 623, as a separate line item on each regular bill of each subscriber, each of the following:
>
> "(1) The amount of the total bill assessed as a franchise fee and the identity of the franchising authority to which the fee is paid.
>
> "(2) The amount of the total bill assessed to satisfy any requirements imposed on the cable operator by the franchise agreement to support public, educational, or governmental channels or the use of such channels.
>
> "(3) The amount of any other fee, tax, assessment, or charge of any kind imposed by any governmental authority on the transaction between the operator and the subscriber."[49]

In this section, Congress plainly endorses an approach which provides the beneficial antiseptic effect of sunshine, that is, one which ensures full public disclosure of any and all additional costs imposed on cable operators by various regulations. Providing for a separate line item on the subscriber's bill to show these costs will subject them to the necessary exposure which Congress intended. The most forceful expression of Congress' desire for such exposure comes from statements made by Senator Lott in introducing Floor Amendment

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[49] 1992 Cable Act Section 14.

No. 1497 which was subsequently adopted as section 14 of the 1992 Cable Act:

> I would like to offer my amendment that I have at the desk dealing with the subscriber bill itemization to give the cable companies an opportunity to itemize these so-called hidden costs to explain to people what is involved in the charges so they will know it is not just the cable company jacking up the prices.[50]

In introducing this amendment, Sen. Lott's goal was to extend the category of governmentally imposed costs that cable operators may itemize on subscriber bills beyond mere franchise fees to other taxes and hidden "regulatory costs." In commenting on these "hidden costs," Senator Lott stated:

> <u>The fact is sometimes the rates have gone up because of hidden, unidentified increases in fees or taxes which the cable has to pay and the cable company passes on to the consumers, and it is not explained</u>. So I will have an amendment that will at least say the cable companies can identify on the bills those fees and taxes charged that drive up the rates. At least let the people know. Let us at least have openness in billing.[51]

Comcast strongly supports these Congressional efforts authorizing the disclosure to consumers of the hidden costs incorporated in their cable bills.

Furthermore, Comcast proposes that one additional "hidden cost" imposed on cable operators, namely retransmission consent fees, be subject to the very same "sunshine effects" as the items specifically enumerated in section 622(c). Section 623(b)(7)(A)(iii) requires that channels carried under

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[50] January 29, 1992. 138 Cong. Rec. S569 (daily ed. Jan. 29, 1992)(Statement of Senator Lott).

[51] <u>Id.</u> (Emphasis added).

retransmission consent arrangements are to be carried on the basic service tier.[52] Equally significantly, section 325(b)(3)(A)(2) requires the Commission to consider the impact of retransmission consent on rates for the basic service tier and to ensure cable rates do not rise substantially as a result of the new arrangements. The Notice tentatively concludes that the Commission's obligation to consider the impact of retransmission consent on basic cable rates can be "fully discharged by our balancing of the enumerated statutory factors, including the direct costs of signals" in prescribing regulations for basic service rates.[53] Comcast respectfully suggests that this tentative conclusion does not sufficiently "take into account" retransmission consent compensation in establishing regulations for the basic service tier. The Commission should take the additional step of permitting cable operators to itemize on subscriber bills the costs incurred for retransmission consent just as all other hidden costs identified by section 622(c).

The Commission has already acknowledged elsewhere that fees paid or other valuable consideration granted by cable operators

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[52] In this regard, Comcast supports the Notice's tentative conclusion that "Section 623(b)(7)(A)(iii) would appear to make any local signal carried pursuant to retransmission consent a basic tier channel." Id. at ¶ 11.

[53] Id. at n. 60. In its Signal Carriage NPRM, the Commission concluded that "there is no specific regulatory action that the Commission need take pursuant to Section 325(b) concerning the impact of retransmission consent compensation on basic rates." In addition, the Commission decided to wait until the instant rate regulation proceeding to decide how it would treat retransmission consent compensation vis-a-vis basic service rates. See Signal Carriage NPRM at ¶¶ 67-69.

in exchange for retransmission consent "clearly qualify as 'direct costs' ... of obtaining, transmitting, and otherwise providing signals."[54] While many members of Congress have described retransmission consent compensation in less benign terms,[55] regardless of how one chooses to characterize these costs, the fact remains that they are just that -- costs incurred by the cable operators which, like all other governmentally imposed costs, should be itemized on the subscriber bill.

Providing for a separate line item on the subscriber's bill to show this payment by cable operators to their local broadcasters will render the practice subject to the necessary exposure contemplated by Congress. It is reasonable to expect it will produce the tempering effects Congress desired. Full disclosure permits such additional costs to be subject to informed judgments by consumers and voters, such that they may assess whether these additional costs are worth paying for, and thus worth imposing in the first instance. Otherwise, they in

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[54] Signal Carriage NPRM at ¶ 68.

[55] See, e.g., Statement of Congressman Rohrabacher, October 5, 1992, 138 Cong. Rec. at 11484 (daily ed. October 5, 1992):

> Cable companies will be forced by this bill as it stands to pay huge sums to the networks which will become a legitimate expense, and then cable will pass it on to the customer. The net effect of this legislation will be higher cable bills. Cable companies will become the collection agents for the networks. They will take the money from the pockets of their customers and pass it on to the networks.

essence become hidden internal subsidies, a very poor policy result and one contrary to the statutory scheme.

To help facilitate the identification of some of these governmentally imposed costs for billing purposes, Congress included a "Cost of Franchise Requirements" provision. Section 623(b)(4).[56] Comcast supports the Notice's tentative conclusion that the purpose of section 623(b)(4) is not to mandate the establishment of "separate cost-based charges ... for costs attributable to franchise requirements." Rather, the purpose of this section is, as the Commission correctly notes, to:

> assure the establishment of standards that will permit the cable operator to identify on subscriber bills ... the amount of the bill attributable to franchise requirements.[57]

However, Comcast disagrees with the Commission's tentative conclusion to establish rigid components comprising the costs attributable to franchise requirements or to require under any circumstances that per channel and overhead costs be determined according to prescribed accounting and cost allocation requirements.[58] The Commission should eschew all such formulas that endeavor to dictate how a particular cost on the subscriber

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[56] Section 623(b)(4) provides: "The regulations prescribed by the Commission under this subsection shall include standards to identify costs attributable to satisfying franchise requirements to support public, educational, and governmental channels or the use of such channels or any other services required under the franchise."

[57] Notice at ¶ 73.

[58] Id.

bill is itemized. Such an approach will unnecessarily entangle the Commission in administrative quagmires that it would do well to elude.

The better approach is found in the Commission's alternate recommendation to accord cable operators flexibility to "use reasonable methods to determine per channel costs and allocations of overhead" in calculating the costs attributable to franchise requirements.[59] Indeed, the same flexibility should extend to cable operator computations of each element itemized on the subscriber bill. The Commission should leave it to the states and localities to examine the appropriateness of a cable operator's itemized costs; these local entities have both the incentive and the requisite ability to monitor effectively the cost calculations employed by cable operators in this context.

Finally, in certain circumstances, the governmentally imposed costs incurred by cable operators may force the cable operator to exceed the benchmark rate established for basic service. To provide for such instances, the Commission should adopt a rule which creates a safe harbor for cable operators who are forced to exceed the benchmark in this manner. Cable operators should not be penalized for obeying the law.

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[59] Id.

B. Geographically Uniform Rate Structure

Comcast supports the tentative conclusion that a geographic uniform rate structure does not prohibit the establishment of reasonable categories of service with separate rates and terms and conditions of service. Notice at ¶ 113. Separate or bulk rates should be available for, but not limited to, multiple unit dwellings, hospitals, educational institutions, hotels/motels and the like. The difference in prices reflects lower transaction costs which the cable operator should be allowed to pass on to consumers.

In addition, defining a geographic service area as a franchise area is the most prudent thing to do. Political boundaries count. In addition to differences in taxes, terrain and construction requirements, artifacts of local franchise and regulatory requirements affect the cost and price of service in adjacent markets. It should not be a surprise therefore, that prices vary from franchise to franchise, even in contiguous franchises. Requiring that all franchises served by the same headend have the same rate structure ignores these realities.

C. Collection Of Information

It would be a waste of public and private resource to require all cable systems to respond to the information specified in Appendix C. A statistically valid sample will enable the Commission to compile accurate price data. In addition, as long as the Commission adopts benchmark and "bad actor" approaches to rate regulation, there is no need to collect any cost-based data.

D. Negative Option Billing

The Commission should be careful not to read more into the negative option billing prohibition than Congress intended. There is no evidence that Congress intended to foreclose cable operators from adding, subtracting, or substituting programming on an existing tier. Therefore, Comcast agrees with the Notice's tentative conclusion that "a change in the composition of a tier that was accompanied by a price increase justified under our rate regulations would not be subject to the negative option billing prohibition." Notice at ¶ 120.

VI. NEED FOR TRANSITION PERIOD

A. Phase-In of the Act's Regulatory Requirements Will Best Prevent Unintended Consequences to Consumers and Operators

The 1992 Act contemplates the establishment of regulatory requirements which undoubtedly will cause fundamental and profound changes. Many of these changes cannot be implemented abruptly as a practical matter. In addition, the Commission should be mindful that flash-cut changes may cause undesirable consequences to consumers, and accordingly, should design a regulatory scheme which phases in the 1992 Act's rate requirements over time.

1. The Cable Industry Will Need Time to Adjust to the Act's Requirements

The 1992 Act mandates significant changes in the cable industry's pricing mechanisms. Prior to enactment of the 1992 Act, cable companies were free of significant governmental controls in designing their rate structures. Each company historically has been at liberty to price each part of its package as it deemed appropriate, without concern for the need to relate costs to prices with any precision. Rates reflect widely differing levels of contribution from different components of the overall cable package. Equipment lease rates illustrate the point. For the convenience of a remote control, a customer pays a monthly rental rate that typically not only covers the remote but also provides, in many cases, a contribution over and above the remote's specific, unique costs toward recovery of the overall cost of providing cable service.[60] Rates also reflect various marketing plans established, for example, to encourage new customer's subscription by discounting installation charges. Indeed, relatively few industry-wide standards or practices have developed.[61] This reality can be seen most readily in the

[60] Contributions over cost by one product or service to other services within an economic entity are not unique to cable. In fact, the phenomenon has been very common in the telephone industry for many decades.

[61] Rates for various elements of cable service, i.e., program tiers, converters, remote controls, additional outlets and service installations, have not been tied historically to a uniform method of cost allocation or authorized rate of return on an element by element basis. In fact, within limits, it is common to find different operating subsidiaries of an MSO maintaining dissimilar rate structures and pricing practices.

pricing of cable equipment. Some systems bundle, either partially or wholly, converter boxes, remote control devices and other equipment with basic cable service for billing purposes. Other companies charge subscribers separate, itemized prices for basic cable service, converter boxes and remote control equipment. For example, a not atypical Comcast 60,000 subscriber system could have 30,000 converters for which no explicit charge is made and 20,000 additional outlets for which an explicit charge is made although they are not necessarily equipped with a converter.

Many aspects of the business will need to be recast as cable companies align their practices with the statutory requirements. The instant proceedings will force the cable industry to alter its pricing practices and rate structures. The necessary rate rebalancing will take time. That is so for mechanical reasons -- designing and implementing new rate structures for 2.8 million subscribers is not a trivial process. It also is so because the cable industry has to take into account and find appropriate ways to attend to its lenders' legitimate requirements. The financing of the cable industry has become a large and complicated undertaking. By way of example, last month Comcast concluded a transaction involving the allocation of the Storer Communications cable assets. Comcast's financing was provided by a consortium comprising 35 commercial banks and financial institutions from North America, Europe, and Japan. In any such transaction and in the sale of debt instruments to the public the borrower must agree and adhere to customary covenants designed to reduce the lenders' risk. We are not suggesting that the limitations associated with leverage have deprived the cable industry of the ability to adjust to new circumstances, including new legal requirements. It is a fact, however, that any significant change in a typical cable company's revenue expectations will implicate the interests of more than just its shareholders. Should the Commission's implementation of the rate-related provisions of the 1992 Act significantly alter the financial risks of the business, time will be needed to assure that this new reality is accommodated without undue harm to the cable industry's lenders.[62]

2. Phase-in of the Act's Requirements Will Help Minimize Subscriber Dislocations

Similarly, the changes that the 1992 Act contemplates will affect cable subscribers. The 1992 Act's proposals raise the possibility that certain subscribers may be asked to pay more and others asked to pay less, even assuming that adjustments will be gross revenue neutral. If prices for equipment are separately listed and charged according to some cost basis by type of equipment, each customer with a converter would see a charge for that converter over and above their programming charges. Customers with an additional outlet but no associated converter

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[62] There is, of course, a significant consumer stake in the outcome here. Governmentally-imposed losses on the lending community or materially increased risks to lenders will increase the cost and reduce the flow of funds to the industry, reducing industry dynamism.

could see their existing rate per additional outlet drop depending upon the identified costs for an additional outlet. There are market reactions today which are controlling the rates for remotes and additional outlets without reference to a cost-based pricing standard. A premature cost-based pricing approach, based on incomplete cost allocation information, could result in rate dislocations that are disruptive to customers and contrary to market realities.

The Commission previously has recognized the value of transitions in proceedings which involved price changes to consumers. In the Second Computer Inquiry the Commission designed a bifurcated transition plan for the deregulation of customer premises equipment.[63] In doing so, the Commission recognized the threat to ratepayers from significant changes in long established practices, abrupt increases in local exchange rates, and the need to "make adjustments to existing arrangements involving allocations of costs, investment and revenues." 84 F.C.C. 2d 50, 66 (1980). The transition plan incorporated these concerns in an effort to prevent significant disruption.

Similarly, the Commission took a transitional approach in designing access charge rules. See Amendment to Part 69 of Rules, 2 F.C.C. Rcd 6447, 6457 (1987); MTS and Wats Market Structure (Phase I), 93 F.C.C. 2d 241, 283-97 (1983), recon., 97

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[63] See Amendment of Section 64.702 of Rules (Second Computer Inquiry), 77 F.C.C. 2d 384 (1980), recon. 84 F.C.C. 2d 50, 66-67 (1980) further recon., 88 F.C.C. 2d 512, 519-20 (1981); aff'd sub nom., CCIA v. FCC, 693 F.2d 198 (D.C. Cir. 1982).

F.C.C. 2d 682 (1983). In its access charge decisions, the Commission acknowledged that flash-cut changes in separations and access charge rules would produce "hardship for some ratepayers and carriers that can be mitigated by the phased introduction of the new rules." 2 F.C.C. Rcd 6447, 6457 (1987). It is noteworthy that the access charge rule changes did not contemplate an increase in overall rate levels. Rather, the prospect of rate restructuring and the concomitant redistribution of gains and losses prompted the Commission to adopt a phased-in approach. The gradual transition to changes in access charges permitted a more comfortable adjustment to the new economic realities and avoided adverse effects on universal service.

As with customer premises equipment and access charges, the inevitable redistribution of gains and losses, and unnecessary dislocations that will occur here warrant a transition.

Furthermore, without regard to the cost of securing these improvements, there is unanimity that quality has improved significantly since deregulation. Consumers now have higher quality and more diverse programming. Facilities improvements, including deployment of fiber on a large scale, have also occurred.[64] Consumers have a clear interest to see this continue. The abrupt imposition of regulatory requirements may not only reverse these trends, but stop progress completely. A careful transition can help avoid this danger.

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[64] In 1993, Comcast is doubling the amount of fiber in its plant.